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11 Attorneys for Plaintiff
12 *Empire Level Manufacturing Corp.*
/

13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF NEVADA**

15 Empire Level Manufacturing Corp.,
a Wisconsin corporation,
16 Plaintiff,

17 v.

Case No.: 2:14-cv-00718

18 Toolrich Imp. & Exp. Co., Ltd.,
a Chinese company,
19 Zhejiang Yongkang Shiya Wanxing Tools Factory,
a Chinese company,
20 Wuxi Just Int'l Trading Co., Ltd.,
a Chinese company,
21 Pro-Starter Tools Co. Ltd.,
a Chinese company,
22 Zhejiang Boda Measure Tools Co., Ltd.,
a Chinese company,
23 Jinhua Shunchi Tools Factory,
a/k/a Jinhua Chunyi Tools Co., Ltd.,
24 a/k/a Jinhua City Shunchi Tools Factory,
a Chinese company,
25 Cixi Ocean Trade Co., Ltd.,
a Chinese company, and
26 Shaoxing Sunway Tools & Hardware Export &
Import Co. Ltd.,
27 a Chinese company,

28 Defendants.

**ORDER GRANTING
PRELIMINARY INJUNCTION**

1 Empire Level Manufacturing Corp. ("Empire") filed a Verified Complaint against the
2 eight above-listed Defendants, and at the same time filed an *ex parte* Motion for a Temporary
3 Restraining Order, Seizure Order and Preliminary Injunction ("the Motion"). The Court
4 considered the arguments contained in the Motion and its supporting documents, and, based
5 thereon, entered a temporary restraining and seizure order (DE-10) on May 8, 2014, which also
6 set a bond requirement of \$10,000 and a preliminary injunction hearing date of May 20, 2014.
7 Counsel for Plaintiff Empire appeared at the preliminary injunction hearing, but counsel did not
8 appear for any of the Defendants. At such hearing the Court was informed that, on May 8, 2014,
9 the Defendants were served process and the Defendants' subject goods were seized at the
10 National Hardware Show in Las Vegas pursuant to the Order. Based on the papers submitted
11 and the arguments and responses provided at the hearing, the Court finds and orders as follows:

12 1. Empire is likely to succeed in demonstrating that it owns a federally registered
13 trademark, United States Trademark Registration No. 2,833,616 ("the '616 Trademark
14 Registration," a copy of which is attached hereto as Exhibit 1), for key portions of the look of its
15 em81.9 torpedo level, namely, the appearance of its vial window, as well as common law rights
16 in and to the overall appearance of such torpedo level (see attached Exhibit 2), and that such
17 registered trademark and overall appearance serve to signify the source of such product. The
18 non-functional aesthetic elements which constitute the '616 Trademark Registration and the
19 overall appearance collectively comprise the protectable trademark rights at issue (collectively,
20 the "Empire Marks").

21 2. The injury to Empire's reputation and goodwill resulting from Defendants'
22 infringement of the Empire Marks is irreparable, and Defendants are unlawfully seeking to
23 capitalize on the reputation and goodwill of Empire.

24 3. The harm to Empire from Defendants' infringement clearly outweighs any
25 potential harm to any legitimate interest of Defendants resulting from the issuance of a
26 preliminary injunction.

27 4. The public interest in avoiding confusion is served by issuance of an injunction.
28

1 5. The value of the seized goods, all of which were shown at the hearing, is no more
2 than modest; furthermore, counsel represented that Empire is financially responsible.

3 NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:

4 A. Defendants, their officers, agents, servants, employees, and attorneys, and all
5 other persons in active concert or participation with one or more of them who receive actual
6 notice of this Order, are enjoined and restrained, throughout the pendency of this litigation or
7 until the Court otherwise orders, from engaging in the following activities and from assisting or
8 inducing others to engage in the following activities:

9 i. Using any of the Empire Marks or any other trademark that is a colorable
10 imitation of any Empire Mark or confusingly similar thereto in connection with a level;

11 ii. Importing, exporting, distributing, shipping, introducing into commerce,
12 returning, disposing of, purchasing, offering for sale, marketing, selling, soliciting, filling orders
13 for, promoting, or advertising, including without limitation on the Internet, any level embodying
14 the Empire Marks;

15 iii. Passing off, promoting, or selling any products as being produced by or
16 under the supervision or control of Empire when such is not the case; and/or

17 iv. Destroying, altering, shipping, secreting, or otherwise making unavailable
18 to the Court, Empire, the United States Marshal or other law enforcement officer, any
19 documents or tangible things concerning the importing, exporting, distribution, shipment,
20 introduction into commerce, return, disposal of, purchase, offer for sale, sale, solicitation, filling
21 of orders for, promotion or advertising of any level product embodying the Empire Marks,
22 and/or any documents or tangible things in any way pertinent to this action.

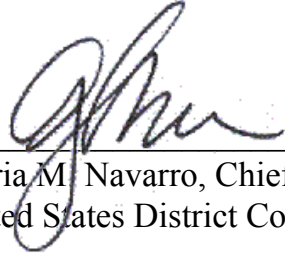
23 B. Empire's counsel shall be permitted to maintain possession of the seized goods
24 during this litigation for use by the Court and by counsel for the parties pursuant to the
25 requirements of the Federal Rules of Civil Procedure. The term "Empire's counsel" as used
26 herein shall mean attorneys of record in this matter, as well as paralegal assistants, stenographic
27 and clerical employees working under the direct supervision or control of such counsel.

28 C. Service of a copy of this Order and the Verified Complaint shall be made upon

1 Defendants by Empire's counsel by mail to the addresses set forth in the Verified Complaint
2 and/or by email to contact information otherwise provided by Defendants, and/or by facsimile;
3 service by any of such methods shall constitute sufficient service thereof.

4 D. The bond, previously set (in DE-10) at \$10,000, is hereby reduced to \$100, to
5 secure the payment of such costs and damages as may be suffered or sustained by a party who is
6 found to have been wrongfully enjoined or whose property has been wrongfully seized.

7 **IT IS SO ORDERED** this 6th day of August, 2014.

8
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10 
11 Gloria M. Navarro, Chief Judge
12 United States District Court

13 Respectfully submitted by:

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Attorneys for Plaintiff
Empire Level Manufacturing Corp.

Exhibit 1

Int. Cl.: 9

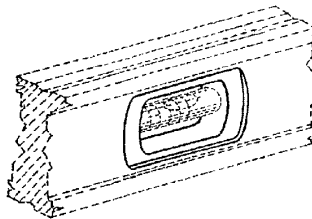
Prior U.S. Cls.: 21, 23, 26, 36 and 38

Reg. No. 2,833,616

United States Patent and Trademark Office

Registered Apr. 20, 2004

**TRADEMARK
PRINCIPAL REGISTER**



EMPIRE LEVEL MFG. CORP. (WISCONSIN CORPORATION)
10950 POTTER ROAD
MILWAUKEE, WI 53226

FOR: LEVELS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 10-31-1980; IN COMMERCE 10-31-1980.

THE MARK IS A THREE-DIMENSIONAL CONFIGURATION OF THE GOODS THEMSELVES, CONSISTING OF A VIAL-WINDOW "MAT" EXTENDING ENTIRELY THROUGH THE LEVEL AND AN OUTER FACEPLATE SURROUNDING THE MAT, CREATING A FRAMED-MATTED PICTURE "LOOK". THE INNER MAT HAS RECTANGULAR INNER AND OUTER EDGES, EACH WITH SOFTLY CURVED CORNERS, THE INNER EDGE

DEFINING THE WINDOW AND THE OUTER EDGE BEING THE JUNCTURE OF INNER MAT AND OUTER FACEPLATE; THE OUTER FACEPLATE FORMS A FRAME OF A CONTRASTING COLOR DARKER THAN THE LIGHTER-COLORED MAT WHICH IT FRAMES. THE MARK IS NOT LIMITED TO ANY PARTICULAR CONTRASTING COLORS; COLOR IS NOT A FEATURE OF THE MARK. THE DRAWING SHOWS THE MARK ON A PORTION OF A LEVEL. THE UPPER AND LOWER BROKEN LINES ARE STRUCTURE THAT FORMS NO PART OF THE MARK.

SEC. 2(F).

SER. NO. 76-300,474, FILED 8-17-2001.

SUSAN STIGLITZ, EXAMINING ATTORNEY

Exhibit 2

